



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

RIN 0648-BM03

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery of the South Atlantic Region; Amendment 51

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Announcement of availability of fishery management plan amendment; request for comments.

SUMMARY: The South Atlantic Fishery Management Council (Council) submitted Amendment 51 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP) for review, approval, and implementation by NMFS. If approved by the Secretary of Commerce, Amendment 51 to the FMP would revise the catch limits for snowy grouper and the associated sector harvest allocations. In addition, Amendment 51 would revise the commercial seasonal quotas, recreational fishing season, and recreational accountability measures (AMs). The purpose of Amendment 51 is to end overfishing of snowy grouper, rebuild the stock, and achieve optimum yield (OY) while minimizing, to the extent practicable, adverse social and economic effects.

DATES: Written comments must be received by *[insert date 60*

days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments on Amendment 51, identified by "NOAA-NMFS-2023-0026," by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov and enter "NOAA-NMFS-2023-0026" in the Search box. Click the "Comment" icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit all written comments to Rick DeVictor, NMFS Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments - enter "N/A" in the required fields if you wish to remain anonymous.

An electronic copy of Amendment 51, which includes a fishery impact statement and a regulatory impact review,

may be obtained from the Southeast Regional Office website at <https://www.fisheries.noaa.gov/node/151366>.

FOR FURTHER INFORMATION CONTACT: Rick DeVictor, telephone: 727-824-5305, or email: rick.devictor@noaa.gov.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each regional fishery management council to submit any FMP or FMP amendment to the Secretary of Commerce (the Secretary) for review and approval, partial approval, or disapproval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP or amendment, publish an announcement in the **Federal Register** notifying the public that the FMP or amendment is available for review and comment.

The Council prepared the FMP that is being revised by Amendment 51. If approved, Amendment 51 would be implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Act.

Background

The Council manages the snapper-grouper fishery, including snowy grouper, in Federal waters from North Carolina south to the Florida Keys in the South Atlantic under the FMP. The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and achieve, on a continuing basis, the OY from federally managed fish stocks. These mandates are intended to ensure

that fishery resources are managed for the greatest overall benefit to the Nation, particularly with respect to providing food production and recreational opportunities and protecting marine ecosystems.

All weights described in this notification are in gutted weight.

In 2004, a stock assessment for snowy grouper was completed through the Southeast Data, Assessment, and Review (SEDAR) process (SEDAR 4), and it was determined that the stock was subject to overfishing and overfished. As a result of that stock status, Amendment 13C to the FMP established management measures to end overfishing (71 FR 55096, September 21, 2006) and Amendment 15A to the FMP established a rebuilding plan for snowy grouper (73 FR 14942, March 20, 2008). The rebuilding plan year started in 2006 with a target time to rebuild snowy grouper of 34 years.

The snowy grouper stock was assessed again in 2013 through SEDAR 36 and was determined to not be undergoing overfishing, although the stock was overfished but rebuilding. In response to the assessment and a subsequent acceptable biological catch (ABC) recommendation by the Council's Scientific and Statistical Committee (SSC), the Council and NMFS implemented management actions through the final rule for Regulatory Amendment 20 to the FMP (80 FR 43033, July 21, 2015). Regulatory Amendment 20 and its

implementing final rule modified the annual catch limit (ACL) by setting it equal to the ABC and OY, increased the commercial trip limit to 200 lb (91 kg), and modified the recreational fishing season from the calendar year to May through August.

The most recent SEDAR stock assessment for South Atlantic snowy grouper (SEDAR 36 Update) was completed in 2021 and included data through 2018. The assessment used revised estimates for recreational catch from the Marine Recreational Information Program (MRIP) based on the Fishing Effort Survey (FES). In 2018, the MRIP fully transitioned its estimation of recreational effort to the mail-based FES. Previous estimates of recreational catch for snowy grouper were made using MRIP's Coastal Household Telephone Survey (CHTS) phone call-based methodology. As explained in Amendment 51, total recreational fishing effort estimates generated from the MRIP FES are different than those from the MRIP CHTS and earlier survey methods. This difference in estimates is because MRIP FES is designed to more accurately measure fishing activity, not because there was a sudden change in fishing effort. The MRIP FES is considered a more reliable estimate of recreational effort by the Council's SSC, the Council, and NMFS, and more robust compared to the MRIP CHTS method. The SSC reviewed the SEDAR 36 Update and found that the assessment was conducted using the best scientific

information available, and was adequate for determining stock status and supporting fishing level recommendations. The findings of the assessment indicated that the South Atlantic snowy grouper stock remains overfished and is undergoing overfishing.

Following a notification from NMFS to a fishery management council that a stock is undergoing overfishing and is overfished, the Magnuson-Stevens Act requires the fishery management council to develop an FMP amendment with actions that immediately end overfishing and rebuild the affected stock. In a letter dated June 10, 2021, NMFS notified the Council that the snowy grouper stock is overfished and undergoing overfishing but continues to rebuild, and the Council subsequently developed Amendment 51 in response to the results of SEDAR 36 Update.

In addition to the proposed revisions to the sector ACLs and seasonal commercial quotas, the Council determined that further modifications to snowy grouper management measures are needed to help constrain recreational harvest to the proposed fishing levels in Amendment 51. Amendment 51 would reduce the length of the recreational fishing season and would also adjust the recreational AMs to ensure they are effective at keeping recreational landings from exceeding the proposed recreational ACL and correct for ACL overages if they occur. The Council decided not to revise the current commercial trip limit or AMs, finding that

those measures sufficiently ensured that the commercial harvest of snowy grouper is constrained to the ACL.

The Council determined that the actions in Amendment 51 would end overfishing of South Atlantic snowy grouper, rebuild the stock, and achieve OY while minimizing, to the extent practicable, adverse social and economic effects. The Council would also revise the overfishing limit (OFL) for snowy grouper, set the ACL equal to the ABC, and update other biological reference points in this FMP amendment.

Actions Contained in Amendment 51

Amendment 51 would revise the catch levels for snowy grouper, including the OFL, ABC, and ACL. Actions in this amendment would also revise the sector ACLs, seasonal commercial quotas, recreational fishing season, and recreational AMs.

OFL, ABC, and Annual OY

The current ABC for snowy grouper was approved in Regulatory Amendment 20, based upon a stock assessment (SEDAR 36) and recommendations from the Council's SSC.

Based on the SEDAR 36 Update, the Council's SSC recommended to the Council new OFL and ABC levels, with the ABC reduced from the OFL. The assessment and associated OFL and ABC recommendations for snowy grouper incorporated the revised estimates for recreational catch and effort from the MRIP FES. The SSC determined that the new OFL and ABC recommendations within Amendment 51 also represent the best

scientific information available.

The Council chose to specify OY for snowy grouper on an annual basis and set it equal to the ABC and total ACL, in accordance with the guidance provided in the Magnuson-Stevens Act National Standard 1 Guidelines at 50 CFR 600.310(f)(4)(iv).

Total ACLs

As implemented through Regulatory Amendment 20, the current total ACL and annual OY for snowy grouper are equal to the current ABC of 185,464 lb (84,125 kg). In Amendment 51, the Council would revise the ABC and keep the ABC, ACL, and annual OY equal to each other.

The amendment would revise the total ACL and annual OY equal to the recommended ABC of 119,654 lb (54,274 kg) for 2023; 121,272 lb (55,008 kg) for 2024; 122,889 lb (55,741 kg) for 2025; and 122,889 lb (55,741 kg), for 2026 and subsequent fishing years.

Sector Allocations and ACLs

The Council would revise the commercial and recreational allocations of the total ACL for snowy grouper in Amendment 51. The current sector ACLs for snowy grouper are based on the commercial and recreational allocations of 83 percent and 17 percent, respectively, that were revised in Regulatory Amendment 20. These allocations were determined using average commercial and recreational landings from 1986 to 2005, which included estimates of

recreational catch from the MRIP CHTS method.

In Amendment 51, the Council would determine allocations using the average commercial and recreational landings from 1986 to 2005, but include the estimates of recreational catch during those years using the MRIP FES method from the SEDAR 36 Update. The Council would specify new commercial and recreational allocations of 87.55 percent and 12.45 percent, respectively, which results in a shift of allocation of 4.55 percent from the recreational sector to the commercial sector. The Council reasoned that using average landings from 1986 to 2005 was more appropriate because it would exclude the more recent years that had depth and area closures that may affect the allocation calculations, and would strike the most appropriate balance between the needs of both sectors. The Council acknowledged that because the snowy grouper portion of the snapper-grouper fishery operates primarily in deeper water and is therefore more difficult to access for recreational fishermen, when compared to snapper-grouper species found in shallower water closer to shore, the allocations between sectors have historically and consistently been much higher for the commercial sector. The Council considers this allocation to be fair and equitable to fishery participants in both the commercial and recreational sectors, and would be carried out in such a manner that no particular individual, corporation, or

other entity would acquire an excessive share. The Council determined that this allocation is also reasonably calculated to promote conservation and is a wise use of the resource, since it would remain within the boundaries of a total ACL that is based upon an ABC recommendation from their SSC that incorporates the best scientific information available. The Council acknowledged that the commercial sector would benefit with additional allocation, but that the economic shifts were relatively minor.

The commercial ACLs would be 104,757 lb (47,517 kg) for 2023; 106,174 lb (48,160 kg) for 2024; 107,589 lb (48,802 kg) for 2025; and 107,589 lb (48,802 kg) for 2026 and subsequent years.

The recreational ACLs would be 1,668 fish for 2023; 1,691 fish for 2024; 1,713 fish for 2025; and 1,713 fish for 2026 and subsequent years.

The commercial quota for snowy grouper is equivalent to the commercial ACL. Regulatory Amendment 27 to the FMP established two commercial fishing seasons for snowy grouper and divided the commercial quota between the seasons (85 FR 4588, January 27, 2020). The Council allocated 70 percent of the commercial quota to Season 1 from January through June, and 30 percent of the quota to Season 2 from July through December. Any remaining commercial quota from Season 1 is added to the commercial quota in Season 2, but any remaining quota from Season 2 is

not be carried forward into the next fishing year.

Amendment 51 would not alter the current commercial fishing seasons or commercial season ACL allocations.

Under Amendment 51, the commercial quotas in 2023 for Season 1 would be 73,330 lb (33,262 kg) and for Season 2 would be 31,427 lb (14,255 kg); in 2024, Season 1 would be 74,322 lb (33,712 kg) and Season 2 would be 31,852 lb (14,448 kg); in 2025, Season 1 would be 75,312 lb (34,161 kg) and Season 2 would be 32,277 lb (14,641 kg); and for 2026 and subsequent years, Season 1 would be 75,312 lb (34,161 kg) and Season 2 would be 32,277 lb (14,641 kg).

Recreational Fishing Season

Recreational harvest of snowy grouper is currently allowed May 1 through August 31. Amendment 51 would revise the recreational fishing season for snowy grouper where harvest would be allowed only from May 1 through June 30. The recreational sector would be closed annually from January 1 through April 30, and from July 1 through December 31. During the proposed seasonal closures, the recreational bag and possession limits for snowy grouper would be zero. Shortening the time recreational fishing is allowed would help to reduce the risk that recreational harvest would exceed the proposed reduction to its sector ACL, while still allowing for retention of snowy grouper when recreational fishermen target co-occurring species, such as blueline tilefish, in some areas.

Recreational AMs

The current recreational AMs were established through Amendment 34 to the FMP (81 FR 3731, January 22, 2016). The AMs include an in-season closure for the remainder of the fishing year if recreational landings reach or are projected to reach the recreational ACL, regardless of whether the stock is overfished. The AMs also include a post-season adjustment if recreational landings exceed the recreational ACL, and then during the following fishing year recreational landings will be monitored for a persistence in increased landings. If the total ACL is exceeded and snowy grouper are overfished, the length of the recreational fishing season and the recreational ACL are reduced by the amount of the recreational ACL overage.

The amendment would revise the recreational AMs for snowy grouper. Given the proposed 2-month fishing season, the current in-season closure and stock status based post-season AM would be removed. The proposed recreational AM would be a post-season AM that would be triggered in the following fishing year if the recreational ACL was exceeded in the previous year. If recreational landings exceed the recreational ACL, NMFS would reduce the length of the recreational fishing season in the following year by the amount necessary to prevent the recreational ACL from being exceeded. However, the length of the recreational season would not be reduced if NMFS determines, using the best

scientific information available, that a reduction is not necessary.

The Council intends the proposed recreational AM would avoid an in-season closure of the recreational sector and would extend maximum fishing opportunities to the sector during the proposed 2-month recreational season. The proposed rule would remove the current potential duplicate AM application of a reduction in the recreational season length and a payback of the recreational ACL overage if the total ACL was exceeded. Under the proposed measure, the AM trigger would not be tied to the total ACL, but only to the recreational ACL. The proposed modification would ensure that an ACL overage in the recreational sector does not in turn affect the catch levels for the commercial sector. Any reduced recreational season length as a result of the AM being implemented would apply to the recreational fishing season in the year following a recreational ACL overage.

Proposed Rule for Amendment 51

A proposed rule to implement Amendment 51 has been drafted. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule for Amendment 51 to determine whether it is consistent with Amendment 51, the FMP, the Magnuson-Stevens Act, and other applicable law. If that determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

Consideration of Public Comments

The Council has submitted Amendment 51 for Secretarial review, approval, and implementation. Comments on Amendment 51 must be received by *[insert date 60 days after date of publication in the FEDERAL REGISTER]*. Comments received during the respective comment periods, whether specifically directed to Amendment 51 or the proposed rule, will be considered by NMFS in the decision to approve, partially approve, or disapprove Amendment 51. All comments received by NMFS on the amendment or the proposed rule during their respective comment periods will be addressed in the final rule.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 16, 2023.

Jennifer M. Wallace,
Acting Director, Office of Sustainable Fisheries,
National Marine Fisheries Service.